

Notice of Allowability

Application No.

09/998,958

Examiner

Shobha Kantamneni

Applicant(s)

CHANDAR ET AL.

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 08/12/04.
2. ☒ The allowed claim(s) is/are 1, 6, 7, 8, 11 (Renumbered as 1, 2, 3, 4, 5).
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ellen Plotkin on 12/02/04.

The application has been amended as follows:

1. Amend claim 1 by inserting in (b) line 3, after mixtures thereof
**, wherein the polymeric emulsifiers are selected from the group
consisting of Pemulen TR1, Pemulen TR2, Aculyn 22, and Pluronic F68**
2. **Delete Claim 9**

The following is an examiner's statement of reasons for allowance:

Applicant's Amendment to claim 1 by incorporating the limitation "wherein the half-life of the retinoid in the composition is at least about 70 days at 50 °C" in the Response filed on 08/12/04 overcomes the rejection of claims 1, 6-8, and 11 under 35 U.S.C 103(a) as being unpatentable over Habib et al. (EP 832 643) in view of Simon (6,346,256). The prior art '643 discloses the stabilization of an unstable retinoid in oil-in-water emulsions for skin care compositions using crystalline solid barrier ingredients and further the compositions of '643 have a half-lifetime of from 20-45 days at 50 °C.

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The present invention achieves stabilization of retinoids to a greater degree than the closest prior art i.e at least 70 days at 50 °C, using an alternative system containing specific polymeric emulsifiers selected from Pemulen TR1, Pemulen TR2, Aculyn 22, and Pluronic F68 and without the addition of crystalline solid barrier ingredients. Thus the present invention is a superior alternative system for the stabilization of retinoids in a cosmetic oil-in-water composition.

The Rule 132 Declaration filed by the Applicant showed that the addition of the specific polymers such as Pemulen TR1 or Pluronic F 68 to Habib et al. formulations did not result in the increase of stability of the Habib et al formulation. Thus the Declaration filed by the Applicant showed that, it is not obvious to add polymeric emulsifiers such as Pemulen TR1, Pemulen TR2, Aculyn 22, and Pluronic F68 to the oil-in-water emulsions of Habib et al.

Thus the present invention is novel and unobvious over the prior art.

Conclusion

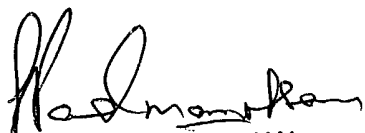
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shobha Kantamneni whose telephone number is 571-272-2930. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER